

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARVIN LEE AKERS : CIVIL ACTION
VS. :
DAVID DIGUGLIELMO, ET AL. : No. 08-3752

ORDER

AND NOW, this day of , 2008, upon consideration of the

Petition for Writ of Habeas Corpus, and after review of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells, and the Amended Habeas Corpus Petition/Objections of the Petitioner, it is hereby **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;
2. This Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, is **TRANSFERRED** to the United States District Court for the Western District of Pennsylvania, in accordance with 28 U.S.C. § 2241(d)¹;
3. Based upon the determination that the within petition should be transferred to another venue, Petitioner has failed to show a denial of any constitutional right, thus, a certificate of appealability shall not be issued; and

¹Petitioner argues that his maximum sentence of seventeen years expired on February 28, 2008 and that he is being illegally confined. The magistrate judge recommended that the action be transferred to the Western District of Pennsylvania pursuant to 28 U.S.C. § 1404(a) because his conviction occurred in Allegheny County and all witnesses and records would likely be in the Western District. Petitioner filed objections, but the only objection relating to the recommendation of the magistrate judge is that paragraph 4 of her recommendation incorrectly directed the clerk to transfer the original record to the U.S. District Court for the Middle District of Pennsylvania, rather than the Western District. I have corrected that typographical error and approve and adopt the recommendation. The court also notes that the petitioner complains about the delay of the Pennsylvania Supreme Court in disposing of his application for leave to file original process and petition for writ of habeas corpus. In his objections, however, the petitioner attaches a copy of an order from the Supreme Court of Pennsylvania filed after this petition was filed granting the application for leave to file but denying his petition for writ of habeas corpus.

4. If in its possession, the Clerk of Court shall transmit the original record to the United States District Court for the Western District of Pennsylvania.

IT IS SO ORDERED.

BY THE COURT:

s/William H. Yohn Jr.

WILLIAM H. YOHN, JR., J.
